

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FIRST CONGREGATIONAL CHURCH  
OF DETROIT,

Plaintiff,

vs.

GUIDEONE INSURANCE COMPANY,

Defendant.

U.S. District Court No.  
Hon.

Wayne County Circuit Court  
Case No. 18-001221-CK

---

BERTRAM L. MARKS (P47829)  
TIFFANY R. BRENT (P80738)  
LITIGATION ASSOCIATES, PLLC  
Attorneys for Plaintiff  
7375 Woodward Avenue, Suite 2000  
Detroit, MI 48202-3156  
(248) 737-4444  
[bmarks@litigationassociatespllc.com](mailto:bmarks@litigationassociatespllc.com)  
[tbrent@litigationassociatespllc.com](mailto:tbrent@litigationassociatespllc.com)

WITOLD SZTYKIEL (P27603)  
JOHNSTON, SZTYKIEL & HUNT, P.C.  
Attorneys for Defendant  
3250 West Big Beaver Road, Suite 500  
Troy, MI 48084  
(248) 641-1800  
[wsztykiel@jshlawmi.com](mailto:wsztykiel@jshlawmi.com)

---

**NOTICE OF REMOVAL OF ACTION UNDER 28 USC §1441(b)(DIVERSITY)**

TO: Clerk of the Court

PLEASE TAKE NOTICE that the Defendant, GuideOne Insurance Company, a Mutual Insurance Company, hereby removes to this Court the matter previously pending in the state court action described below pursuant to 28 USC §1441(b)(Diversity):

1. That on or about January 31, 2018, an action was commenced in the Circuit Court for the County of Wayne, State of Michigan entitled: First Congregational Church of Detroit,

Plaintiff vs. GuideOne Insurance Company, Defendant. A copy of the Complaint was served by certified mail on Defendant on or about February 19, 2018. The Summons and Complaint and exhibits thereto are attached.

2. That in the Complaint filed in the Circuit Court for the County of Wayne, the damages claimed are not specified other than to indicate the value of the claim exceeds the jurisdictional minimum for the Circuit Court for the County of Wayne, \$25,000.00 (Paragraph 1), and the Plaintiff has sustained certain damages as a result of payment under a policy of insurance for real property, personal property and additional living expenses.

3. That attached as exhibits are copies of the following documents which constitute all of the process, pleadings and orders served upon the Defendant. There is no other process, pleading or discovery filed in the Circuit Court for the County of Wayne which is not attached hereto.

a) Summons and Complaint including Exhibit 1 – Policy of Insurance.

4. That this action is of a civil nature over which this Court has original jurisdiction pursuant to 28 USC §1332 and is one which may be removed to this Court by the Defendant, GuideOne Insurance Company, pursuant to the provisions of 28 USC §1441(b) in that it is a civil action between citizens of different states, and the matter in controversy exceeds the amount of \$75,000, exclusive of interest and costs.

5. That upon information and belief, that although the amount of damages has not been specified in the Plaintiff's Complaint, the photographs of the damage which Plaintiff maintains is covered by the subject policy of insurance (**Exhibit A**), lead Defendant to believe that the claim does in fact exceed this Court's jurisdictional limit of \$75,000.00.

6. That as such, the Plaintiff, First Congregational Church of Detroit is making a claim for damages in excess of the jurisdictional minimum as set forth in 28 USC §1332 of \$75,000.00 for damages for which it is seeking recovery pursuant to the terms and provisions of the subject policy of insurance.

7. That the Plaintiff, First Congregational Church of Detroit, is, upon information and belief, a corporation organized under the laws of the State of Michigan, is a citizen of the State of Michigan, and has its principal place of business at 33 E. Forest Avenue, in the City of Detroit, County of Wayne, State of Michigan.

8. That the Defendant, GuideOne Insurance Company, is a mutual insurance company, organized pursuant to the laws of the State of Iowa, and is a citizen of the State of Iowa, with its principal place of business at 1111 Ashworth Road, West Des Moines, IA 50265-3538.

9. That as such, there is complete diversity of citizenship between the parties, the Plaintiff, First Congregational Church of Detroit, a citizen of the State of Michigan, the Defendant, GuideOne Insurance Company, a citizen of the State of Iowa, thereby satisfying the requirements of 28 USC §1332 and that the minimum jurisdictional amounts of \$75,000.00 have been met pursuant to 28 USC §1332.

10. That the Notice of Removal has been timely filed pursuant to 28 USC §1442(b) since it has been filed within the 30 days of the receipt of the Complaint by mail on February 19, 2018.

12. That contemporaneous with this filing, a Notice is being provided to the adverse party, First Congregational Church of Detroit, of the removal to Federal Court, and a copy of the Notice is being filed with the Clerk of the Circuit Court for the County of Wayne.

13. A copy of Defendant's proposed Answer to Complaint, Demand for Trial by Jury, Affirmative Defenses and exhibits are attached hereto and collectively identified as ***Exhibit B***.

/s/Witold Sztykiel  
Johnston, Sztykiel & Hunt, P.C.  
3250 W. Big Beaver Road, Suite 500  
Troy, Michigan 48084  
(248) 641-1800  
Witold Sztykiel (P27603)  
[wsztykiel@jshlawmi.com](mailto:wsztykiel@jshlawmi.com)

DATED: March 9, 2018



Approved. SCAO

Original - Court  
1st Copy- Defendant2nd Copy - Plaintiff  
3rd Copy -Return

AA098797

STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT  
WAYNE COUNTY

SUMMONS AND COMPLAINT

CASE NO  
18-001221-CK

Court Address 2 Woodward Ave., Detroit MI 48226

Court Telephone No. 313-224-5225

**Plaintiff**

First Congregational Church of Detroit

**Plaintiff's Attorney**Bertram L. Marks 47829  
7375 Woodward Ave Ste 2000  
Detroit, MI 48202-3156

v

**Defendant**Guide One Insurance Company  
PO Box 14543  
Des Moines, IA 50306-3538**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued  
1/31/2018This summons expires  
5/2/2018Court clerk  
File & Serve Tyler**Family Division Cases** (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

- ☐ This case involves a minor who is under the continuing jurisdiction of another Michigan court. The name of the court, file number and details are on page \_\_\_\_\_ of the attached complaint.
- ☐ There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

**Civil Cases** (The following is information required in the caption of every complaint and is to be filled by the plaintiff.)

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ There is no other pending or resolved civil action arise out of the same transaction or occurrence as alleged in the complaint.
- ☐ An civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

**VENUE**

Plaintiff(s) residence (include city, township, or village)

Defendant(s) residence (include city, township, or village)

Place where action arose or business conducted

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN  
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

First Congregational Church of Detroit

Case No.:

CK

Hon.:

Plaintiffs

v

Guide One

Defendants

Litigation Associates, PLLC

Bertram L. Marks, (P47829)

Tiffany R. Brent, (P80738)

Attorneys for Plaintiffs

7375 Woodward Ave.

Suite 2000

Detroit, MI 48202

(248) 737-4444

[BMarks@LitigationAssociatesPLLC.com](mailto:BMarks@LitigationAssociatesPLLC.com)

[TBrent@LitigationAssociatesPLLC.com](mailto:TBrent@LitigationAssociatesPLLC.com)

**PROOF OF SERVICE**

I certify that on February 16, 2018, I served a copy of *Plaintiff's Complaint* and this *Proof of Service* with the Court. Notice of this filing will be sent electronically via the Court's filing system to all parties registered to receive electronic notification.

Respectfully Submitted,

LITIGATION ASSOCIATES, PLLC

/s/Toni I. Gowdy

Legal Assistant

7375 Woodward Ave.

Suite 2000

Detroit, MI 48202

(248) 737-4444

[TGowdy@LitigationAssociatesPLLC.com](mailto:TGowdy@LitigationAssociatesPLLC.com)

February 16, 2018

LITIGATION ASSOCIATES, PLLC

7375 Woodward, Suite 2000 • Detroit, MI 48202  
248.737.4444

STATE OF MICHIGAN  
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

First Congregational Church of Detroit

Plaintiffs

Hon.

Case No.: CK

Guide One

Defendants

Litigation Associates, PLLC

Bertram L. Marks, (P47829)

Tiffany R. Brent, (P80738)

Attorneys for Plaintiffs

7375 Woodward Ave.

Suite 2000

Detroit, MI 48202

(248) 737-4444

[BMarks@LitigationAssociatesPLLC.com](mailto:BMarks@LitigationAssociatesPLLC.com)

[TBrent@LitigationAssociatesPLLC.com](mailto:TBrent@LitigationAssociatesPLLC.com)

COMPLAINT

There is no civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge; nor do I know of the same transaction or occurrence alleged in this complaint that is either pending or previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this court.

NOW COMES the Plaintiff, First Congregational Church of Detroit, herein by and through their attorneys at LITIGATION ASSOCIATES, PLLC and states unto this honorable court as follows:

I. Plaintiff is an ecclesiastical corporation organized and existing under the laws of the

LITIGATION ASSOCIATES, PLLC

7375 Woodward, Suite 2000 • Detroit, MI 48202  
248.737.4444



State of Michigan with its principal place of business located in Wayne County, Michigan.

2. Defendant Guide One is an Insurance Company with its principal place of business in Michigan and authorized to do business in Wayne County, Michigan.
3. This action arises out of a policy of insurance (the Policy), number 1435-326 entered between Plaintiff and Guide One Insurance Company on or about November 16, 2016. A true copy of the Policy is attached as (*Exhibit 1*).
4. The amount in controversy exceeds \$25,000.
5. The Policy was, by its terms, in effect from November 16, 2016 to November 17, 2017 and afforded insurance to Plaintiffs, First Congregational Church of Detroit, against liability in accordance with the terms, condition, limitations, and amounts defined in the Policy.
6. Under the terms of the Policy, coverage was to be extended to include damages to the premises within the Policy provisions and the building of the insurance agreement. The damages sustained by Plaintiffs are covered by the Policy.
7. Guide One has alleged that the damages sustained by First Congregational Church of Detroit fall within the exclusions outlined in the Policy.
8. First Congregational Church of Detroit has and will produce direct evidence to rebut and refute Guide One's claim that damages is excludable.
9. The Plaintiffs investigated the facts surrounding the damages with the aid of experts in the fields of roofing and structural engineering.
10. Guide One forwarded to Plaintiff notice of the commencement of the action and a copy of the complaint and summons. Guide One also demanded that the Plaintiff defend



LITIGATION ASSOCIATES, PLLC

7375 Woodward, Suite 2000 • Detroit, MI 48202  
248.737.4444

against the action and pay any resulting judgment pursuant to the policy terms.

11. On or about January 8, 2018, Plaintiff served on Guide One that Notice that it intended to commence legal proceedings if the claims made by Plaintiffs were denied.
12. Under these facts, there is an actual controversy between the parties, and a multiplicity of litigation will be avoided if these issues are determined by this court at one time.
13. This court has power under MCR 2.605 to adjudicate the matters at issue and enter its judgment declaring the rights of all parties to this action.
14. It is necessary for this court to adjudicate and declare the rights of the parties to this action to guide Plaintiffs' future conduct and preserve legal rights under the Policy. This court's determination will further resolve Plaintiffs' potential conflict.

PLAINTIFFS' REQUESTS that this court order that Plaintiffs' have a right to have its contract for insurance honored and pay First Congregational Church's claim to the policy limits.

Respectfully Submitted,

LITIGATION ASSOCIATES, PLLC

/s/Bertram Marks

Bertram Marks (P47829)

Tiffany Brent (P80738)

Litigation Associates, PLLC

7375 Woodward Ave.; Suite 2000

Detroit, MI 48202

(248) 737-4444

Date: January 31, 2018

**CERTIFICATE OF SERVICE**

I certify that on January 31, 2018, I served a copy of the PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT ACTION and this CERTIFICATION OF SERVICE. Notice of this filing will be sent electronically via the Court's Odyssey filing system to all parties registered to receive electronic notification.

By: /s/Toni I. Gowdy  
/s/Toni Gowdy  
Legal Assistant  
Litigation Associates, PLLC  
7375 Woodward Ave., Suite 2000  
Detroit Michigan 48202  
248.737-4444  
TGowdy@LitigaitonAssociatesPLLC.com

January 31, 2018

Respectfully Submitted:

LITIGATION ASSOCIATES PLLC

/s/Bertram L. Marks  
Bertram Marks (P47829)  
Tiffany Brent (P80738)  
Litigation Associates, PLLC  
7375 Woodward Ave., Suite 2000  
Detroit, MI 48202  
(248) 737-4444  
BMarks@LitigaitonAssociatesPLLC.com  
TBrent@LitigaitonAssociatesPLLC.com

LITIGATION ASSOCIATES, PLLC

7375 Woodward, Suite 2000 • Detroit, MI 48202  
248.737.4444

# Exhibit 1

## Policy of Insurance

COMMERCIAL PROPERTY COVERAGE PART  
DECLARATIONS PAGE

POLICY EFFECTIVE 11/16/2016  
NAMED INSURED FIRST CONGREGATIONAL CHURCH

POLICY NO. 1435-326

DESCRIPTION OF PREMISES AND COVERAGES PROVIDED  
THIS POLICY COVERS THE PROPERTY LISTED BELOW.

RISK NO. 001  
PREMISES NO. 001 BUILDING NO. 001  
CONSTRUCTION JOISTED MASONRY  
OCCUPANCY CHURCH  
PREMISES ADDRESS  
33 E FOREST AVE

DETROIT

WAYNE  
BUILDING

MI 48201

LIMIT OF INSURANCE

\$8,964,000

PERSONAL PROPERTY

\$1,589,300

CAUSE OF LOSS FORM

SPECIAL INCLUDING THEFT

SPECIAL INCLUDING THEFT

COINSURANCE

100%

100%

DEDUCTIBLE

\$1000

\$1000

OPTIONAL COVERAGES

AGREED VALUE

AGREED VALUE

REPLACEMENT COST

REPLACEMENT COST

10/03/2016

ORIGINAL COPY

PCP 73 00 07 89

00000000



COMMERCIAL PROPERTY COVERAGE PART  
DECLARATIONS PAGE

POLICY EFFECTIVE 11/16/2016 POLICY NO. 1435-326  
NAMED INSURED FIRST CONGREGATIONAL CHURCH

OPTIONAL COVERAGE FORMS

FORM: GCP0406/0409  
KEY PERSON REPLACEMENT EXPENSES

SCHEDULE

\$ 25,000 KEY PERSON REPLACEMENT EXPENSES

10/09/2016 ORIGINAL COPY PCR-73 00 07.89

S T A T E M E N T O F V A L U E S

POLICY EFFECTIVE 11/16/2016

POLICY NO. 1435-326

NAMED INSURED FIRST CONGREGATIONAL CHURCH  
OF DETROIT  
33 E FOREST AVE

DETROIT MI 48201

-----  
I N S T R U C T I O N S  
-----

1. THE VALUES SHOWN ON THE ATTACHED PAGES MUST BE ACTUAL CASH VALUES (100%) OR REPLACEMENT COST VALUES (100%) AND SHOULD REFLECT THE BASIS OF COVERAGE FOR EACH BUILDING, PERSONAL PROPERTY OF THE INSURED OR BOTH.
2. THE VALUES SHALL BE SUBMITTED TO THE INSURANCE COMPANY AND SUBJECT TO ITS ACCEPTANCE.
3. NOTHING CONTAINED IN THESE INSTRUCTIONS SHALL BE CONSTRUED AS CHANGING IN ANY MANNER THE CONDITIONS OF THE POLICY.
4. THE COMPANY MAY REQUIRE THIS STATEMENT OF VALUES TO BE SIGNED BY THE INSURED, OR IN THE CASE OF FIRMS, BY A PARTNER OR AN OFFICER.

THIS "STATEMENT OF VALUES" IS FILED WITH THE DESIGNATED COMPANY LISTED BELOW.

ALL VALUES SUBMITTED ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNED \_\_\_\_\_

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

GuideOne Insurance  
1111 ASHWORTH ROAD  
WEST DES MOINES, IOWA 50265-3538  
(515)267-5000

GuideOne Specialty Mutual  
Insurance Company

10/03/2016

ORIGINAL COPY

CP11927 (789)

STATEMENT OF VALUES

POLICY EFFECTIVE 11/16/2016 POLICY NO. 1435-326

NAMED INSURED FIRST CONGREGATIONAL CHURCH

PREMISES AND DESCRIPTION OF PROPERTY 100% VALUES

ACTUAL CASH VALUE REPLACEMENT COST

RISK NO. 001

PREMISES NO. 001 BUILDING NO. 001

CONSTRUCTION JOISTED MASONRY

OCCUPANCY CHURCH

PREMISES ADDRESS

33 E FOREST AVE

DETROIT

WAYNE

MI 48201

BUILDING LIMIT

\$8,964,000

PERSONAL PROPERTY

\$1,589,300

10/03/2015

ORIGINAL COPY

CP11927 (789)

20180241

## COMMERCIAL PROPERTY CONDITIONS

### GENERAL

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

#### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

#### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

#### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

#### D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

#### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

#### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

#### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:



a. The United States of America  
(including its territories and pos-  
sessions);

b. Puerto Rico; and

c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

If any person or organization to or for whom  
we make payment under this Coverage Part  
has rights to recover damages from another,  
those rights are transferred to us to the extent  
of our payment. That person or organization  
must do everything necessary to secure our  
rights and must do nothing after loss to impair  
them. But you may waive your rights against  
another party in writing.

1. Prior to a loss to your Covered Property  
or Covered Income.

2. After a loss to your Covered Property or  
Covered Income only if, at time of loss,  
that party is one of the following:

a. Someone insured by this insurance;

b. A business firm;

(1) Owned or controlled by you; or

(2) That owns or controls you; or

c. Your tenant.

This will not restrict your insurance.

## CAUSES OF LOSS -- SPECIAL FORM

---

Words and phrases that appear in quotation marks have special meaning. Refer to Section G. -- Definitions.

### A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
  2. Limited in Section C., Limitations;
- that follow.

### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but

for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump, except as provided in the Additional Coverages of the Building And Personal Property Coverage Form; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or



- (c) Doors, windows or other openings.

But if water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria results from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

- a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or

electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.



But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
  - (1) Acting alone or in collusion with others; or
  - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
  - (1) An abrupt falling down or caving in;
  - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This Exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage -- Collapse; or
- (b) To collapse caused by one or more of the following:
  - (i) The "specified causes of loss";
  - (ii) Breakage of building glass;
  - (iii) Weight of rain that collects on a roof; or
  - (iv) Weight of people or personal property.

- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss," we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a., through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

- b. Acts or decisions. Including the failure to act or decide, of any person, group, organization or governmental body.

- c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:

- (a) Damage or destruction of "finished stock"; or
- (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

- (3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period of Indemnity Optional Coverage or any variation of these.



(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

(1) Paragraph B.1.a., Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your canceling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

(1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph B.1.a., Ordinance Or Law;
- (b) Paragraph B.1.c., Governmental Action;
- (c) Paragraph B.1.d., Nuclear Hazard;
- (d) Paragraph B.1.e., Utility Services; and
- (e) Paragraph B.1.f., War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

**(a) Contractual Liability**

We will not defend any claim or "suit," or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage

resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit," or pay any damages, loss, expense or obligation resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**5. Additional Exclusion**

The following provisions apply only to the specified property.

**Loss Or Damage To Products**

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under any arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**C. LIMITATIONS**

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

- 1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.
 

However, this limitation does not apply to:

    - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
    - (2) Business Income Coverage or Extra Expense Coverage.
  - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
  - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
- a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass, or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.
 

However, this limitation does not apply:

    - (1) If the property is located on or within 1,000 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
    - (2) To Business Income Coverage or to Extra Expense Coverage.
  - d. Walks.
3. The special limit shown for each category, a. through e., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.



- c. \$2,500 for patterns, dyes, molds and forms.
- d. \$1,000 for stamps, tickets, including lottery tickets held for sale, and letters of credit.
- e. \$1,000 for money and securities. Loss or damage by theft includes the cost of stop payment orders for checks or drafts drawn by persons on their own accounts for payment of money to you as charitable contributions. The limit for this category, e., does not apply to the cost of stop payment orders.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This Limitation, C.3., does not apply to Business Income Coverage or to Extra Expense Coverage.

- 4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
  - a. Results in discharge of any substance from an automatic fire protection system; or
  - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

#### D. ADDITIONAL COVERAGE -- COLLAPSE

The coverage provided under this Additional Coverage -- Collapse applies only to an abrupt collapse as described and limited in D.1. through D. 7.

- 1. For the purpose of this Additional Coverage -- Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended business purpose.
- 2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part

of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
  - (1) A cause of loss listed in 2.a. or 2.b.;
  - (2) One or more of the "specified causes of loss";
  - (3) Breakage of building glass;
  - (4) Weight of people or personal property; or
  - (5) Weight of rain that collects on a roof.

#### 3. This Additional Coverage -- Collapse does not apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.



4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in 2.a. through 2.d., we will pay for loss or damage to that property only if:

(1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and

(2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is not the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a Cause of Loss listed in 2.a. through 2.d. ;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in 4. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 5. does not apply to personal property if marring and/or scratching is the only

damage to that personal property caused by the collapse.

6. This Additional Coverage -- Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

7. This Additional Coverage -- Collapse will not increase the Limits of Insurance provided in this Coverage Part.

8. The term Covered Cause of Loss includes the Additional Coverage -- Collapse as described and limited in D.1. through D.7.

**E. ADDITIONAL COVERAGE -- LIMITED COVERAGE FOR "FUNGUS", WET ROT, DRY ROT AND BACTERIA**

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

a. A "specified cause of loss" other than fire or lightning; or

b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;

b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and

c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property

is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage -- Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

#### F. ADDITIONAL COVERAGE EXTENSIONS

##### 1. Property In Transit

See Coverage Extension, Property Off-premises or Property in Transit in the Building And Personal Property Coverage Form.

##### 2. Water Damage, Other Liquids, Powder or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

##### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is



part of a building. This does not include removing or replacing window displays.

This Coverage Extension F.3., does not increase the Limit of Insurance.

#### G. DEFINITIONS

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

With respect to loss or damage to walks by vehicles, vehicles do not include vehicles you own or which are operated in the course of your business.

- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone

or dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or
  - (2) Sinking or collapse of land into man-made underground cavities.
- b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure; or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam. Water damage also means accidental overflow of a baptistry.

## **EQUIPMENT BREAKDOWN COVERAGE**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS -- BASIC FORM  
CAUSES OF LOSS -- BROAD FORM  
CAUSES OF LOSS -- SPECIAL FORM

- A. The following is added as Additional Coverage to the Causes of Loss -- Basic Form, Broad Form or Special Form.

**Additional Coverage -- Equipment Breakdown**

The term Covered Cause of Loss includes the Additional Coverage Equipment Breakdown as described and limited below.

1. We will pay for direct physical damage to Covered Property that is the direct result of an "accident." As used in this Additional Coverage, "accident" means a fortuitous event that causes direct physical damage to "covered equipment." The event must be one of the following:
  - a. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - b. Artificially generated electrical, magnetic or electromagnetic energy, including electric arcing, that damages, disturbs, disrupts or otherwise interferes with any electrical or electronic wire, device, appliance, system or network;
  - c. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
  - d. Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
  - e. Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

2. The following coverages also apply to the direct result of an "accident." These coverages do not provide additional amounts of insurance.

**a. Expediting Expenses**

With respect to your damaged Covered Property, we will pay, the reasonable extra cost to:

- (1) make temporary repairs; and
- (2) expedite permanent repairs or permanent replacement.

The most we will pay for loss or expense under this coverage is \$50,000.

**b. Hazardous Substances**

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance." This includes the additional expenses to clean up or dispose of such property.

This does not include contamination of "perishable goods" by refrigerant, including but not limited to ammonia, which is addressed in 2.c.(1)(b) below. As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved.

The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$50,000.



**c. Spoilage****(1) We will pay:**

(a) for physical damage to "perishable goods" due to spoilage;

(b) for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;

(c) any necessary expenses you incur to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

(2) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident," less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Valuation condition.

The most we will pay for loss, damage or expense under this coverage is \$100,000.

**d. Data Restoration**

We will pay for your reasonable and necessary cost to research, replace and restore lost "data."

The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$50,000.

**e. Service Interruption**

(1) Any insurance provided for Business Income, Extra Expense or Spoilage is extended to apply to your loss, damage or expense caused by the interruption of

utility services. The interruption must result from an "accident" to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission. The equipment must meet the definition of "covered equipment" except that it is not Covered Property.

(2) We will not pay for any loss of Business Income you sustain that results from the interruption of utility services during the first 24 hours following the "accident." However, if the "period of restoration" begins more than 24 hours after the time of the direct physical damage for Business Income, then that time period will apply instead of the 24 hours provided for in this paragraph.

(3) The most we will pay in any "one accident" for loss, damage or expense under this coverage is the applicable limit for Business Income, Extra Expense or Spoilage.

**f. Business Income and Extra Expense**

Any insurance provided under this coverage part for Business Income or Extra Expense is extended to the coverage provided by this endorsement. The most we will pay for loss or expense under this coverage is the applicable limit for Business Income and Extra Expense.

**g. Animals**

We will pay for loss or damage to animals, that are owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings.



The most we will pay for loss or damage under this coverage is \$50,000.

### 3. EXCLUSIONS

All exclusions in the Causes of Loss form apply except as modified below and to the extent that coverage is specifically provided by this Additional Coverage Equipment Breakdown.

a. The following exclusions are modified:

- (1) If the Causes of Loss -- Basic Form or Causes of Loss -- Broad Form applies, the following is added to Exclusion B.2.:

Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions.

However, if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident."

- (2) The following is added to Exclusion B.1.g.:

However, if electrical "covered equipment" requires drying out because of Water as described in g.(1) through g.(3) above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible, for Building or Business Personal Property, whichever applies.

- (3) If the Causes of Loss -- Special Form applies, as respects this endorsement only,

- (a) the last paragraph of Exclusion B.2.d. is deleted and replaced with the following:

But, if an excluded cause of loss that is listed in 2.d.(1) through (7) results in an "accident," we will pay for the loss, damage or expense caused by that "accident."

- (b) the second paragraph of Exclusion B.1.h. is deleted

and replaced with the following:

But if "fungus", wet or dry rot or bacteria results in an "accident", we will pay for the loss or damage caused by that "accident."

b. The following exclusions are added:

- (1) We will not pay for loss, damage or expense caused by or resulting from:

- (a) your failure to use all reasonable means to protect Covered Property from damage following an "accident";

- (b) a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an electrical insulation breakdown test of any type of electrical equipment; or

- (c) any of the following:

- (i) defect, programming error, programming limitation, computer virus, malicious code, loss of "data", loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind; or

- (ii) misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

However, if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident."

- c. With respect to Service Interruption coverage, we will also not pay for an "accident" caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically

- provided in A.1.c. above); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing; collapse; flood or earth movement.
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises; or
- c. An "accident."
- (2) Under Paragraph E.3., the phrase "occurrences of 'specified causes of loss' (other than fire or lightning) and 'Flood'" is replaced with "accidents."
- d. With respect to Business Income, Extra Expense and Service Interruption coverages, we will also not pay for:
- (1) loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business; or
  - (2) any increase in loss resulting from an agreement between you and your customer or supplier.
- e. We will not pay for any loss or damage to land (including land on which the property is located) or lawns.
- f. We will not pay for any loss or damage to animals (except as specifically provided in A.2.g. above).
- g. If the Causes of Loss -- Special Form applies, as respects to this endorsement only, the following provisions are modified under E. Additional Coverage -- Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria:
- (1) Paragraph E.1. is deleted and replaced by the following:
    1. The coverage described in E.2. and E.6. only applies when the "fungus," wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
      - a. A "specified cause of loss" other than fire or lightning;
      - b. Flood, if the Flood Coverage Endorsement applies to the affected premises; or
      - c. An "accident."
  - (2) None of the following is "covered equipment":
    - (a) structure, foundation, cabinet, compartment or air supported structure or building;
    - (b) insulating or refractory material;
    - (c) sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
    - (d) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;

#### 4. DEFINITIONS

The following definitions are added as respects to coverage provided by this endorsement:

##### a. "Covered equipment"

(1) "Covered equipment" means Covered Property:

(a) that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or

(b) which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

(2) None of the following is "covered equipment":

(a) structure, foundation, cabinet, compartment or air supported structure or building;

(b) insulating or refractory material;

(c) sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;

(d) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;



(e) "vehicle" or any equipment mounted on a "vehicle";

(f) satellite, spacecraft or any equipment mounted on a satellite or spacecraft;

(g) dragline, excavation or construction equipment; or

(h) equipment manufactured by you for sale.

b. "Data" means information or instructions stored in digital code capable of being processed by machinery.

c. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.

d. "Media" means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.

e. "One accident" means: If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."

f. "Perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

g. "Vehicle" means, as respects this endorsement only, any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester.

However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power source will not be considered a "vehicle."

**B. The Building and Personal Property Coverage Form is modified as follows.**

1. The definitions stated above also apply to section B. of this endorsement.

**2. CONDITIONS**

The following conditions are in addition to the Conditions in the Building and Personal Property Coverage Form, the Commercial Property Conditions and the Common Policy Conditions.

**a. Suspension**

Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment." This can be done by mailing or delivering a written notice of suspension to:

(1) your last known address, or

(2) the address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment." If we suspend your insurance, you will get a pro rata refund of premium for that "covered equipment" for the period of suspension. But the suspension will be effective even if we have not yet made or offered a refund.

**b. Jurisdictional Inspections**

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

**c. Environmental, Safety and Efficiency Improvements**

If "covered equipment" requires replacement due to an "accident," we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, we will not pay more than 125% of what the cost would have been to replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

The most we will pay for loss, damage or expense under this endorsement arising from any "one accident" is the applicable Limit of Insurance in the Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.



## MICHIGAN CHANGES

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

#### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

- A. When this endorsement is attached to the Standard Property Policy CP 00 99, the term Coverage Part is replaced by the term Policy.
- B. Paragraphs 1., 2., 3. and 6. of the Cancellation Common Policy Condition are replaced by the following:
1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us or our authorized agent advance notice of cancellation.
  2. We may cancel this policy by mailing or delivering to the first Named Insured, with postage fully prepaid, written notice of cancellation at least:
    - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
    - b. 30 days before the effective date of cancellation if we cancel for any other reason.
  3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us or our authorized agent.
  5. If this policy is cancelled, we will send the first Named Insured any pro rata premium refund due. The minimum earned premium shall not be less than the pro rata premium for the expired time or \$25.00, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.
- C. The following is added to the:
1. Loss Payment Condition; and
  2. Mortgageholders Condition:
- If a municipality has elected to apply the provisions of 1998 Michigan Public Act 217, a part of our payment for fire, explosion, vandalism, windstorm or hail, or riot or civil commotion loss or damage to your covered real property in that municipality will be withheld if the loss or damage is subject to the provisions of the Act. The withheld amount will be paid either to:
- (a) The municipality;
  - (b) You and the mortgageholder, if any; or
  - (c) With your consent, the licensed contractor hired by you to perform repair, replacement, or removal services on the lost or damaged real property;
- according to the provisions of Public Act 217. We will notify you, any mortgageholder and the municipality of any loss subject to the provisions of Public Act 217.
- D. The paragraph relating to prejudgment interest in Supplementary Payments in:
1. Legal Liability Coverage Form CP 00 40; and
  2. Mortgageholders Errors And Omissions Coverage Form CP 00 70;
- is replaced by the following:
- Prejudgment Interest awarded against the insured on the part of the judgment we pay.
- E. Commercial Property Coverage Part -- Duties Amended
1. The following, E.2. through E.4., apply to the:
    - a. Mortgageholders Errors And Omissions Coverage Form -- Condition H.3.b. -- Duties In The Event Of Loss -- Coverages C and D; and
    - b. Legal Liability Coverage Form -- Condition D.1. -- Duties In The Event Of Accident, Claim Or Suit.

2. Paragraph H.3.b.(1) in the Mortgageholders Errors And Omissions Coverage Form and Paragraph D.1.b. in the Legal Liability Coverage Form are replaced by the following:

If a claim is made or "suit" is brought against you, you must see to it that we receive prompt notice of the claim or "suit".

3. Notice given by or on behalf of the Insured to our authorized agent, with particulars sufficient to identify the insured, shall be considered notice to us.

4. Failure to:

- a. Give us prompt notice of an accident, claim or "suit"; or
- b. Immediately send us copies of demands, notices, summonses or legal papers received in connection with a claim or "suit";

shall not invalidate a claim made by you if it shall be shown that it was not reasonably possible to give us prompt notice or to immediately send us copies, and that you gave us notice and sent us copies as soon as was reasonably possible.

- F. The following is added to the Legal Action Against Us Commercial Property Condition:

The time for commencing an action against us is tolled from the time you notify us of the loss or damage until we formally deny liability for the claim.

- G. Except as provided in Paragraph H. of this endorsement, the Appraisal Loss Condition is replaced by the following:

#### **APPRAISAL**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and independent appraiser. The

two appraisers will select a competent and impartial umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

- H. The Appraisal Loss Condition in:

1. Business Income (And Extra Expense) Coverage Form CP 00 30; and
2. Business Income (Without Extra Expense) Coverage Form CP 00 32;

is replaced by the following:

#### **APPRAISAL**

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and independent appraiser. The two appraisers will select a competent and impartial umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.